United States
Circuit Court of Appeals
For the Ninth Circuit

MERCHANTS & INSURERS' REPORTING COMPANY, a Corporation, and BANKERS FIRE INSURANCE COMPANY, a Corporation,
Appellants.
vs.
F. A. JONES, Intervenor, and LYSANDER CASSIDY, as Receiver of the BANKERS FIRE INSURANCE COMPANY, a Corporation,
Appellees.
No. 2477

MERCHANTS & INSURERS' REPORTING COMPANY, a Corporation, and PHOENIX FIRE UNDERWRITERS, a Corporation,
Appellants,
vs.
F. A. JONES, Intervenor, and LYSANDER CASSIDY, as Receiver of the PHOENIX FIRE UNDERWRITERS, a Corporation,
Appellees.
No. 2476

Appellees' Brief

STONEMAN AND LING,
Phoenix, Arizona
HENRY W. NISBET,
Los Angeles, Cal.
Solicitors for Appellees

Wannop & Forbush, 218 Franklin St., Los Angeles

United States Circuit Court of Appeals for the Ninth Circuit.

MERCHANTS & INSURERS' REPORTING COMPANY, a Corporation, and BANKERS FIRE INSURANCE COMPANY, a Corporation, Appellants. vs. F. A. JONES, Intervenor, and LYSANDER CASSIDY, as Receiver of the BANKERS FIRE INSURANCE COMPANY, a Corporation, Appellees.	No. 2477

MERCHANTS & INSURERS' REPORTING COMPANY, a Corporation, and PHOENIX FIRE UNDERWRITERS, a Corporation, Appellants. vs. F. A. JONES, Intervenor, and LYSANDER CASSIDY, as Receiver of the PHOENIX FIRE UNDERWRITERS, a Corporation, Appellees.	No. 2476

APPELLEES' BRIEF.

Appellants on this appeal complain of an order made by Hon. Wm. H. Sawtelle, Judge of the U. S. District Court of the District of Arizona, appointing a receiver for the Bankers Fire Insurance Company,

a Corporation, and the Phoenix Fire Underwriteers, a Corporation, their contention being that the court committed error in allowing petitioner Jones on behalf of himself and certain other stockholders in the Merchants and Insurers Reporting Company, a Corporation, one of appellants herein, to file a petition in intervention whereby it was asked to have a receiver appointed instead of the person, or persons sought to have appointed by the said Merchants and Insurers Reporting Company with the consent of the Bankers Fire Insurance Company and the Phoenix Fire Underwriters. And without that intervention the court was powerless to appoint a receiver.

FACTS.

The facts are not disputed; that the Merchants and Insurers Reporting Company, a Corporation organized under the laws of the State of California, on the 25th of October, 1913, filed in the United States District Court of the District of Arizona, a petition whereby they sought to have Leroy H. Civille, H. A. Davis and C. S. Feldman, who were then the directors, and only directors, of both of said Bankers' Fire Insurance Company and the said Phoenix Underwriters, appointed as trustees of the properties of the defendant pending a dissolution and winding up

of the affairs of said corporations (R. 2477, p. 9). That the Bankers' Fire Insurance Company and the Phoenix Fire Underwriters in each of said actions upon the same day appeared by their attorneys, admitted the truth of each and every allegation contained in complainants' petition and joined in the prayer thereof. (R. 2477, p. 12). Thereafter on November 12, 1913, certain proceedings were had whereby the complainants introduced in evidence certain exhibits in support of its petition, and thereupon the defendant in each of said cases joined in the prayer for dissolution. The court was apparently not satisled of the good faith in the matter and took the same under advisement (R. 2476, p. 1). Thereafter, upon petition theretofore filed therefor, on April 8, 1914, the court made its order granting F. A. Jones and other stockholders he represented to file a petition in intervention. (R. 2477, p. 36). The said petition being thereafter on the 13th day of April, 1914, with the affidavit of P. A. Parker in support thereof filed (R. 2477, p. 41-65).

ARGUMENT.

First: With reference to the intervention of F. A. Jones and other stockholders the appellants seem to take the position that because they are not the owners

of any stock of the Bankers' Fire Insurance Company or the Phoenix Fire Underwriters that they have no right to intervene, notwithstanding the fact that the Merchants and Insurers Reporting Company in which they are the holders of stock is the owner of all of the stock of both the Bankers' Fire Insurance Company and the Phoenix Fire Underwriters. We think that the intervenor Jones, and those he represents, have a sufficiently direct and immediate interest in the assets of those two corporations to allow them to intervene to safe-guard and protect the interests of those two corporations, which in effect is the interest of the stockholders of the Merchants and Insurers Reporting Company.

Second: Appellees contend, that irrespective of the right of F. A. Jones or any other stockholders of the Merchants and Insurers Reporting Company to intervene, the Judge of the District Court was not bound to follow the wishes of the appellants in appointing those persons whom *they* desired to act as trustees in winding up the affairs of the two Arizona corporations. The feverish haste and the manner in which the appellants proceeded in the District Court, undoubtedly aroused the suspicions of the Judge of that court and he took time to consider the matter, and before he came to any determination as to his action therein intervenor Jones asked leave

to file his complaint of intervention, which was thereafter allowed and which resulted in matters and facts being brought to the knowledge of the court which resulted in, and we think justly so, of the appointment of some one other than the directors of the Bankers' Fire Insurance Company and the Phoenix Fire Underwriters as receiver. The appellants in effect conceded that a receiver should be appointed, but they designated such receiver trustee and desired to foist their own selection on the court.

Why was it that the stockholders who first gave intervenor Jones written authority to join them in a petition for intervention revoked such authority? (R. 2477, p. 33-34). Undoubtedly some pressure must have been brought to bear on them to revoke that authority and such pressure must have been brought by those officials who wished to perpetuate their control of said corporation indefinitely, notwithstanding the fact that at the annual stockholders meeting of the Merchants and Insurers Reporting Company held in the month of July, 1913, directors were elected who pledged themselves to cause a dissolution of the Bankers' Fire Insurance Company. Leroy H. Civille and H. A. Davis two out of three directors of said corporation being present and acquiescing thereto (R. 2477, p. 49-50). It appears from the affidavit of P. A. Par-

ker, (uncontradicted) that a firm of attorneys in the City of Los Angeles, after the month of July, 1913, when a new Board of Directors was elected at the annual stockholders meeting of the Merchants and Insurers Reporting Company, became the attorneys for all three appellant corporations notwithstanding the fact that one of the members of said firm had for about two years prior thereto continuously kept up an attack against the integrity and honor of all three appellant corporations; that he wrote scurrilous articles concerning the appellant corporations, referring to them as fake corporations and fraudulent corporations. The said attorneys ever since their selection as said attorneys directing the affairs of appellant corporations (R. 2477, p. 55 and p. 58).

The petition in intervention charges the officers of appellant Bankers Fire Insurance Company, cause No. 2477, as likewise the officers of appellant Phoenix Fire Underwriters in cause No. 2476, with having wasted the assets of said companies, and of grossly mismanaging the affairs of both of said appellants' (R. 2477, p. 44). And this is supported by the petition of certain stockholders to the Corporation Commission of Arizona, attached to intervenor's petition and made a part thereof (R. 2477, p. 48). As also by the affidavit of P. A. Parker on behalf of intervenor filed with said petition (R. 2477, p. 57).

It appears from the record that the Arizona Corporation Commission had taken steps to itself take charge and control of the appellant Bankers Fire Insurance Company and the appellant Phoenix Fire Underwriters, and that the Arizona Corporation Commission caused to be served upon each of said corporations an order relating to their affairs (R. 2477, p. 64). This was probably an additional reason for the appellant corporations attempting to procure the District Court of Arizona to appoint the three officials named as trustees, to wit: to hold off the taking charge of the two appellant Arizona corporations by said Commission.

If the appellant corporations were really solicitous of winding up the affairs of the two Arizona corporations speedily and at the minimum of expense, why did they not proceed to do this under the provisions of the laws of the State of Arizona?

Sec. 2107 of the Civil Procedure of that State provides for the dissolution of corporations in the precise case in which each of these appellant Arizona corporations found themselves: "Whenever a corporation heretofore, or hereafter organized or incorporated under the laws of this state shall either . . . . (4) . . . . or whenever at any general or special meeting of the stockholders of any such corporation, the holders of the majority of its outstanding

stock, represented or voting at any such meeting, shall have directed the disposal of all corporate assets, or that the corporation be dissolved, or that it ceases to use or exercise its corporate franchise, either the Attorney General of the State or any resident thereof or any *stockholder or officer of any such corporation* may bring, prosecute and maintain (either in the name of the Attorney General or in his own name) an action in any court of record in this State, to have and procure a judicial dissolution and disincorporation of all rights, privileges and franchises . . . ."—Sec. 2107, Civil Procedure Arizona.

At a special meeting of the stockholders of the Bankers Fire Insurance Company held on the 24th day of October, 1913, there being 1999 shares represented out of a total of 2000, it was unanimously resolved "that the directors be directed to dissolve, or secure the dissolution of these corporations in the most expeditious and economical manner possible" (R. 2476, p. 11-13).

Upon the same day a meeting of the Board of Directors of said corporation was held, and it was then resolved, in pursuance of the action of said stockholders meeting, that said corporation be dissolved and cease to use or exercise any of its corporate franchises (R. 2476, p. 8-9).

Similar action was taken by the Phoenix Fire Underwriters stockholders at a meeting held on the same day (R. 2476, p. 15-17). And by directors' meeting held on same day (R. 2476, p. 18-19).

It would have been a very simple and comparatively inexpensive way to have dissolved these two Arizona corporations by going into the Arizona State courts; but it is patent that the officers of appellant corporations, for reasons of their own, did not want a speedy dissolution of the two Arizona corporations, and endeavored to perpetuate for some indefinite period their control and management of these two Arizona corporations by procuring the directors of the two Arizona corporations to be named as *trustees*, with the aid of the Federal Court.

It was not necessary for them to go into the Federal Court to bring about a dissolution of these two corporations, and none knew it better than themselves; but, having rushed into the Federal Court, and having there failed to perpetuate their control and management of these two Arizona corporations, they are loud in their lamentations over the appointment by the court of a receiver not named by themselves.

We believe that under all of the facts in the case the court was amply justified in appointing a receiver, and one in no wise connected with appellant corpora-

tions, and that no error was committed by the court in so doing.

San Francisco, October 16, 1914.

STONEMAN AND LING,
Phoenix, Arizona, and
HENRY W. NISBET,
Los Angeles, Cal.,
Solicitors for Appellees.